



## **Community Development Block Grant Program**

Substantial Amendment  
2010-2011 Action Plan  
2011-2012 Action Plan

### **What is an Action Plan?**

The U.S. Department of Housing and Urban Development (HUD) requires the City of Newport Beach to complete an Action Plan document each year in order to receive Community Development Block Grant (CDBG) funds. An Action Plan is a component of the City's Five-Year Consolidated Plan. The current Consolidated Plan was adopted on April 27, 2010 and covers 2010-2014. Each fiscal year's Action Plan document is:

- The City's annual application for CDBG funds.
- A budget document that provides for the allocation of CDBG funds to individual activities.
- A technical document that describes each activity's eligibility and National Objective under the regulations as well as the number of people, households, housing units or public facilities that will be served.
- A planning document that describes how each activity relates to the Strategic Plan objectives and performance goals contained within the Five-Year Consolidated Plan.

### **What is a Substantial Amendment?**

As a condition of the grant, HUD requires the City to provide for Citizen Participation in the planning process. The City established its CDBG Citizen Participation Plan on April 27, 2010. The plan requires citizen participation when certain changes are proposed with respect to activities contained within an Action Plan that has been adopted and submitted to HUD. The changes requiring a "Substantial Amendment" include:

- Carrying out an activity not previously described in the Action Plan;
- Canceling an activity previously described in the Action Plan;
- Increasing or decreasing the amount to be expended on a particular activity from the amount stated in the Action Plan by more than 20 percent; or
- Substantially changing the purpose, scope, location or beneficiaries of an activity.

### **How can residents participate?**

The published public notice specifies how residents can obtain a copy of the Substantial Amendment document. It provides details on the duration of the public review period and to whom comments may be submitted in writing. Substantial Amendments also require a public hearing before the City Council at which time members of the public may express their views on the proposed Substantial Amendment. The process is designed to ensure that residents have an opportunity to provide input into the planning process prior to the City Council's decision on the matter.

### **Substantial Amendment to the 2010-2011 Action Plan**

The City proposes to cancel the following activity:

**Title:** Utility Assessment District Grant Program      **Budget:** \$65,922

**Description:** This activity will provide maximum \$5,000 one-time grants to assist low- income owner-occupied households within the City's utility undergrounding assessment districts. Grants may be used for the actual costs associated with utility hook-ups, up to the program maximum of \$5,000. The City expected to serve 7 households in the first year of the program.

**Reason for Cancellation:** Eight (8) applications were received in FY 2010-2011. The status and disposition of those applicants includes:

- Four (4) were determined eligible and provided with information on how to solicit bids and to contract for the work in conformance with the Program Guidelines. None of those four (4) applicants provided the documentation necessary to actually provide grant assistance.
- Two (2) were determined ineligible based on household income exceeding the 50% of AMI threshold.
- Two applications were determined to be incomplete. Neither applicant provided the necessary documentation to complete their application.

**Future use of Funds:** Subsequent to cancellation, the entire \$65,922 budget is to be allocated to the new 2012-2013 Sidewalk, Curb and Gutter Improvements activity.

### **Substantial Amendment to the 2011-2012 Action Plan**

The City proposes to cancel the following activity:

**Title:** Sidewalk, Curb and Gutter Improvements      **Budget:** \$8,802

**Description:** This activity will repair concrete ADA access pathways and other ADA improvements throughout the city.

**Reason for Cancellation:** The activity was not implemented during 2011-2012 due to insufficient CDBG funds.

**Future use of Funds:** Subsequent to cancellation, the entire \$8,802 budget is to be allocated to the new 2012-2013 Sidewalk, Curb and Gutter Improvements activity as part of the 2012-2013 Action Plan.

Citizen Participation

Proof of Publication

30- Day Public Notice for Public Review and Comment

# PROOF OF PUBLICATION

RECEIVED

2012 APR -9 AM 10:21

OFFICE OF  
THE CITY CLERK  
CITY OF NEWPORT BEACH

STATE OF CALIFORNIA)  
) ss.  
COUNTY OF ORANGE )

I am a citizen of the United States and a resident of the County of Los Angeles; I am over the age of eighteen years, and not a party to or interested in the notice published. I am a principal clerk of the NEWPORT BEACH/COSTA MESA DAILY PILOT, which was adjudged a newspaper of general circulation on September 29, 1961, case A6214, and June 11, 1963, case A24831, for the City of Costa Mesa, County of Orange, and the State of California. Attached to this Affidavit is a true and complete copy as was printed and published on the following date(s):

Thursday, March 29, 2012

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Executed on April 4, 2012  
at Los Angeles, California



Signature

## NOTICE OF PUBLIC HEARING AND REVIEW FOR THE CITY OF NEWPORT BEACH SUBSTANTIAL AMENDMENT TO THE 2010-2011 AND 2011-2012 ACTION PLANS

NOTICE IS HEREBY GIVEN that the City of Newport Beach has prepared a draft Substantial Amendment to the 2010-2011 and 2011-2012 Action Plans. The publication of this notice is the beginning of the minimum 30-day public review period required under Federal Regulation 24 CFR 91.105(b)(2). The public review and written comment period begins March 29, 2012 and runs through May 8, 2012.

NOTICE IS HEREBY FURTHER GIVEN that the Substantial Amendment will be presented to the City Council for approval subsequent to a Public Hearing on following date:

DATE: May 8, 2012

TIME: 7:00 P.M.

LOCATION: City Council Chambers  
3300 Newport Boulevard, Newport Beach, California

At this meeting, the City Council will receive public comment on the Substantial Amendment that is to be submitted to the U.S. Department of Housing and Urban Development (HUD).

**BACKGROUND**  
The Action Plan is a grant application to the Department of Housing and Urban Development (HUD) each year to receive CDBG funds. The Action Plan appropriates funds to specific activities for a given year. Should it be necessary to cancel a specific activity included in an Action Plan, the City must notify the public and provide citizens with an opportunity to review and comment.

### CANCELLATION OF ACTIVITIES

The City proposes to cancel the 2010-2011 Utility Assessment District Grant Program, which received \$65,922 to assist low-income homeowners with maximum \$5,000 grants to defray the costs associated with private conversion to newly undergrounded utilities. From July 1, 2010 to present, no grants have been made and the entire \$65,922 allocation remains unspent. The cancellation of this activity will allow these funds to be reprogrammed as part of the 2012-2013 Action Plan for a new CDBG activity.

Further, the City proposes to cancel the 2011-2012 Sidewalk, Curb and Gutter Improvements activity, which received \$8,802. The funding level for this activity was not sufficient to implement the activity. The cancellation of this activity will allow these funds to be reprogrammed as part of the 2012-2013 Action Plan for a new CDBG activity.

### PUBLIC COMMENT

Copies of the Draft Substantial Amendment will be available for public review on the City's website and at the following locations:

City Clerk's Office  
3300 Newport Blvd.  
Newport Beach, CA  
92663

Community Development  
Department  
3300 Newport Blvd.  
Newport Beach, CA  
92663

City of Newport Beach -  
Central Library  
1000 Avocado Avenue  
Newport Beach, CA  
92660

The public is invited to submit written comments on the Draft Substantial Amendment. All comments relative to the draft documents mentioned above should be submitted to the Community Development Department - Planning Division no later than 4:00 p.m. on May 8, 2012.

Questions and written comments regarding the Draft Substantial Amendment may be addressed to Clint Whited, CDBG Consultant, at 3300 Newport Boulevard, P.O. Box 1768, Newport Beach, CA 92658-8915. You may also call Mr. Whited at (949) 476-6006 extension 115 with any questions concerning the above documents.

### ACCESSIBILITY TO MEETINGS AND DOCUMENTS

It is the objective of the City to comply with Section 504 of the Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act (ADA) of 1990 and the ADA Amendment Act of 2008, the Fair Housing Act, and the Architectural Barriers Act in all respects. If you require public documents in an accessible format, the City will make reasonable efforts to accommodate your request. If you require a disability-related accommodation to attend or participate in a hearing or meeting, including auxiliary aids or services, please contact the City Clerk's Office at least 72 hours prior to the meeting at (949) 644-3005.

/s/  
Leilani Brown, City Clerk  
City of Newport Beach  
Published Newport  
Beach/Costa Mesa Daily  
Pilot March 29, 2012.

Citizen Participation

City Council Meeting Minutes

Summary of Public Comments – Refer to Page 448

# CITY OF NEWPORT BEACH

City Council Minutes  
Regular Meeting  
May 8, 2012 – 7:00 p.m.

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I. STUDY SESSION - 4:00 p.m.

II. CLOSED SESSION - 5:06 p.m.

A. CONFERENCE WITH LABOR NEGOTIATORS (Government Code § 54957.6):

Agency Designated Representatives: Dave Kiff, City Manager; and Richard Kreisler, Special Counsel

Employee Organizations: All Labor Associations: Association of Newport Beach Ocean Lifeguards (ANBOL); Lifeguard Management Association (LMA); Newport Beach Fire Management Association (NBFMA); Newport Beach Firefighters' Association (NBFA); Police Management Association (PMA); Police Employees' Association (PEA); City Employees Association (NBCEA); Newport Beach Professional & Technical Employees Association (NBPTEA); Newport Beach Employees League (NBEL); and Newport Beach Part-Time Unit (UPEC, Local 777)

B. PUBLIC EMPLOYEE PERFORMANCE EVALUATION (Government Code § 54957):

Title: City Manager

III. RECESS

IV. RECONVENED AT 7:00 P.M. FOR REGULAR MEETING

V. ROLL CALL

Present: Council Member Hill, Council Member Rosansky, Mayor Pro Tem Curry, Mayor Gardner, Council Member Selich, Council Member Henn, Council Member Daigle

VI. CLOSED SESSION REPORT - City Attorney Harp reported that there are no reportable actions.

VII. PLEDGE OF ALLEGIANCE - Council Member Daigle

VIII. INVOCATION - Mayor Pro Tem Curry

IX. PRESENTATIONS



**Proclamation Designating May 13 to May 19, 2012 as Poppy Week** - Mayor Gardner read the proclamation and presented it to American Legion Auxiliary Post 291 President Kendall Madsen. Miss Poppy, Rachel Heidemen, recited the poem, "In Flander's Field," and handed out poppy boutonnieres.

**Relay for Life Proclamation** - Mayor Gardner read the proclamation and presented it to Relay for Life City Slickers Team Members, Peggy Fort, Matt Lohr, and the rest of the City Slickers Team. Recreation Manager Lohr expressed appreciation to Council Members Hill and Daigle for wearing purple, provided information regarding the event, addressed amounts raised last year, and announced details of the upcoming events. Peggy Fort encouraged community members to get involved in Relay for Life and thanked staff and Council for their participation. Mayor Pro Tem Curry thanked staff, reported that Council has been involved in the event for many years, and encouraged residents to participate.

Fire Chief Poster introduced Assistant Fire Chief Kitch, listed his qualifications, educational background, and duties in his new position.

**X. NOTICE TO THE PUBLIC**

**XI. CITY COUNCIL ANNOUNCEMENTS OR MATTERS WHICH COUNCIL MEMBERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION OR REPORT (NON-DISCUSSION ITEM)**

Mayor Pro Tem Curry reported that he attended the Annual Scholarship Breakfast sponsored by the Chamber of Commerce and filled in for Mayor Gardner for several Film Festival events. He added that he attended the KOCI Radio Fundraiser as well as the opening of the Lido Harbor and Newport Harbor Yacht Clubs.

Council Member Daigle reported that she attended the Fourth Annual Crime Victims' March and Rally sponsored by District Attorney Tony Rackauckas, in which there were many testimonials presented from victims who ultimately became advocates for advancements in the criminal justice system. In addition, she reported that she attended the opening of the Newport Harbor Yacht Club, addressed the current harbor dredging project, and stated she looks forward to attending the upcoming Balboa Yacht Club opening day.

Council Member Henn reported that the Balboa Village Citizens' Advisory Panel will meet on Tuesday, May 15, 2012, at the Nautical Museum where the panel will be considering the first draft of an implementation plan to redraw the vision for the area as well as governance and economic development incentives to help revitalize the Balboa Village. In addition, he announced that the Tidelands Management Committee will meet on Wednesday, May 16, 2012, at 4:00 p.m. at the OASIS Senior Center and invited the public to attend both meetings.

Council Member Selich announced that Sunday, May 20, 2012, is the 2012 Balboa Island Art Walk from 9:00 a.m. to 5:00 p.m.

Mayor Gardner reported that Saturday, May 12, 2012, will be the First Mayor's Walk leaving from the OASIS Senior Center at 9:00 a.m., reported riding her bike on the Corona del Mar foot bridge where she was advised that she is supposed to walk her bike, noted that she saw a sign on the way back that was not very visible, and encouraged the Public Works Department to place visible signs so that residents will know not to ride their bikes over the foot bridge.



**XII. CONSENT CALENDAR**

**A. READING OF MINUTES/ORDINANCES AND RESOLUTIONS**

1. MINUTES FOR THE APRIL 24, 2012 STUDY SESSION AND REGULAR MEETING. *[100-2012]* Waive reading of subject minutes, approve as written and order filed.
2. READING OF ORDINANCES AND RESOLUTIONS. Waive reading in full of all ordinances and resolutions under consideration, and direct the City Clerk to read by title only.

**B. ORDINANCE FOR INTRODUCTION**

3. ORDINANCE REPEALING THE CITY'S VEHICLE ADDRESSED SOLICITATION LAW, NEWPORT BEACH MUNICIPAL CODE, CHAPTER 10.62. *[100-2012]* Introduce Ordinance No. 2012-12 regarding the repeal of the City's Vehicle Addressed Solicitation Law.

**C. CONTRACTS AND AGREEMENTS**

4. PROFESSIONAL SERVICES AGREEMENT WITH ANCHOR, QEA, L.P., FOR WATER QUALITY AND FIELD MANAGEMENT SERVICES FOR THE LOWER BAY FEDERAL DREDGING PROGRAM (C-5118). *[38/100-2012]* a) Approve and execute the Professional Services Agreement with Anchor QEA for water quality monitoring, and authorize the Mayor and City Clerk to execute the agreement; and b) approve Budget Amendment No. 12BA-036 transferring \$388,017 from Account No. 7231-C4402004 and \$15,000 from Account No. 7231-C4402007 in project savings to Account No. 7231-C4402003.
5. PROFESSIONAL SERVICES AGREEMENT WITH ANCHOR, QEA, L.P., FOR PERMITTING AND ENGINEERING DESIGN SERVICES FOR CITY/COUNTY LINDA ISLE/HARBOR ISLAND CHANNEL DREDGING (C-5119). *[38/100-2012]* a) Approve and execute the Professional Services Agreement with Anchor QEA for permitting and engineering design services for the Linda Isle and Harbor Island Channels, and authorize the Mayor and City Clerk to execute the agreement; and b) approve Budget Amendment No. 12BA-037 transferring \$103,065 from Account No. 7231-C4402007 in project savings to Account No. 7231-C4402003.
6. FY 11-12 CITYWIDE SLURRY SEAL PROGRAM - AWARD OF CONTRACT NO. 5087. *[38/100-2012]* a) Approve the project drawings and specifications; b) award Contract No. 5087 to American Asphalt South, Inc., for the Total Bid Price of \$687,000 and authorize the Mayor and the City Clerk to execute the contract; and c) establish an amount of \$34,350 (5%) to cover the cost of unforeseen work not included in the original contract.

**D. MISCELLANEOUS**

7. PLANNING COMMISSION AGENDA FOR MAY 3, 2012. *[100-2012]* Receive

and file.

8. **SUPPORTING ONTARIO'S BID TO OPERATE ONTARIO INTERNATIONAL AIRPORT (ONT). [100-2012]** Authorize Mayor Gardner to send a letter to the Mayor of Ontario regarding the City of Newport Beach's support of the City of Ontario's bid to operate ONT.

**Motion by Mayor Pro Tem Curry, seconded by Council Member Rosansky** to approve the Consent Calendar.

The motion carried by the following roll call vote:

Ayes: Council Member Hill, Council Member Rosansky, Mayor Pro Tem Curry, Mayor Gardner, Council Member Selich, Council Member Henn, Council Member Daigle

### **XIII. ITEMS REMOVED FROM THE CONSENT CALENDAR - None**

### **XIV. PUBLIC COMMENTS**

John Carr, Southern California Volunteer Representative for the National Motto, "In God We Trust", presented background of the organization and requested that Council consider adding the reaffirmation of the motto to the next agenda.

Tony Armijo referenced regulation 10.08.030 and expressed his desire for a special retail business at McFadden Square. He acknowledged that installation of a retail merchandising unit is prohibited in that area, but believed that it would be very successful and be a great addition to the venue and visitor experience and addressed potential economic gain to the City. Mayor Gardner advised him that he can obtain Council email information through the City's website and directed him to send relative information to see if there is a desire by Council to proceed. Assistant City Manager Smith directed him to speak with staff for assistance.

Gary Belt noted that the Newport Shores area is interested in the dredging project, reported that he obtained information from the Army Corps of Engineers that they are to begin in the month of September, and wanted to ensure that the budget include a permitting process for the project.

Nancy Skinner commended Harbor Resource Manager Miller for his work on the dredging project and referenced a previous speaker's request to agendaize consideration of "In God We Trust", indicating that she hoped Council does not agendaize the item because it might cause problems in the community.

### **XV. ORAL REPORTS FROM CITY COUNCIL ON COMMITTEE ACTIVITIES**

Council Member Daigle reported that at the Airport Land Use Commission's last meeting the Commission evaluated the airport environment plan for the Fullerton Airport. She reported that one of the common issues with airports is compatibility with residential areas and stated that the Commission supported the recommendations of the City of Fullerton in approving the plan.

Council Member Henn reported that the Balboa Village Citizens' Advisory Panel met on May 2, 2012, to review the brand promise and vision information that has been developed, stated that the idea is to use the data to develop the vision and the brand for Balboa Village, provided some of the results of the survey, and noted a statement of vision will be considered at the next meeting on May 15, 2012, as part of the implementation plan.

Mayor Pro Tem Curry reported that the Finance Committee met on Monday, May 7, 2012, to consider the budget as presented during the Study Session. He stated that they were advised that the City has an opportunity to combine several assessment districts and refund the outstanding debt resulting in significant savings to homeowners who live in the subject assessment districts.

#### **XVI. PUBLIC HEARINGS**

**9. SUBSTANTIAL AMENDMENT TO COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) ACTION PLANS FOR FISCAL YEARS 2010-2011 AND 2011-2012. [100-2012]**

Senior Planner Campbell presented details of the report including cancellation of two prior programs and reprogramming the corresponding funds with the current year CDBG Action Plan.

**Mayor Gardner opened the public hearing.**

Jim Mosher referenced the final page of the report noting that there were applications for the program but that the applications were never completed and wondered if the City reached out to the applicants to help them with the application.

Senior Planner Campbell reported that a consultant worked with the applicants and added that additional documentation was requested but never submitted.

**Hearing no further testimony, Mayor Gardner closed the public hearing.**

**Motion by Council Member Hill, seconded by Council Member Rosansky** to adopt Resolution No. 2012-30 to approve the Substantial Amendment that 1) cancels the 2010-2011 Utility Assessment District Grant Program and the 2011-2012 Sidewalk, Curb and Gutter Improvements activity and 2) authorizes the City Manager to submit the Substantial Amendment to the U.S. Department of Housing and Urban Development (HUD).

The motion carried by the following roll call vote:

Ayes: Council Member Hill, Council Member Rosansky, Mayor Pro Tem Curry, Mayor Gardner, Council Member Selich, Council Member Henn, Council Member Daigle

**10. COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FISCAL YEAR 2012-2013 ACTION PLAN (PA2010-071) (C-4865). [38/100-2012]**

Senior Planner Campbell presented details of the report establishing the budget for the Community Block Grant program, noted that Requests for Proposal (RFPs) were solicited for public service agencies, addressed the overall budget and priorities established regarding limiting the spending of the funds to 15% for public services, added that the bulk of the funding would be for Section 108 loan programs, reported that the public notice was provided in accordance with applicable law and that staff have not received comments regarding the proposed allocations, added that there is a new public service program this year involving Youth Employment Services and feedback was received from Senior Services requesting additional funding, stated that representatives from the City Consultant, LDM, are available to answer questions, and noted that staff is also requesting to extend their contract.

In response to Council questions, Senior Planner Campbell clarified that the budget for the public services component is capped, reported that the funding cycle goes up and down stating that it is hard to gauge what the general trend will be, and reported that the loan was taken out in 2003 and matures in 2023.

Mayor Gardner addressed administrative costs and urged staff to be as frugal as possible with costs.

**Mayor Gardner opened the public hearing.**

Jim Mosher referenced a citizen participation plan for distribution of the funds noting that no comments are ever received and believed that less money should be spent on consulting and more on public outreach and awareness.

**Hearing no further testimony, Mayor Gardner closed the public hearing.**

**Motion by Mayor Pro Tem Curry, seconded by Council Member Henn** to a) approve the Draft 2012-2013 Action Plan; and b) adopt Resolution No. 2012-31 adopting the 2012-2013 Action Plan and authorize the City Manager to 1) submit the Action Plan to the U.S. Department of Housing and Urban Development (HUD), 2) execute the FY 2012-2013 CDBG Program Grant Agreement and all related documents on behalf of the City, 3) execute subrecipient agreements with the nonprofit organizations receiving allocations of CDBG funds in the Action Plan, 4) execute a one-year contract extension with LDM Associates, Inc. (year 3 of 3), in an amount not to exceed \$58,133 to administer the CDBG program and to monitor the City's Affordable Housing Covenants, and 5) authorize the Community Development Director, or her designee to be the official representative of the City of Newport Beach to submit required environmental documentation for CDBG projects.

The motion carried by the following roll call vote:

Ayes: Council Member Hill, Council Member Rosansky, Mayor Pro Tem Curry, Mayor Gardner, Council Member Selich, Council Member Henn, Council Member Daigle

**11. APPEAL OF DENIAL OF LOT MERGER NO. LM2011-002 TO MERGE 2808 AND 2812 OCEAN BOULEVARD (PA2011-141). [100-2012]**

Community Development Director Brandt reported previous consideration of the item by the Planning Commission and Council, discussed the proposal made by the applicant and Zoning Code comparisons, and referenced a "red-line" version of the Resolution distributed under separate cover.

Assistant Planner Sims provided a PowerPoint presentation addressing locations of the subject properties, previous considerations and findings by Council, comparison of development standards, and Planning Commission consideration and recommendations. She noted attendance of the applicant and his representative from Government Solutions.

Coralee Newman, Principal at Government Solutions, introduced herself and members of her team, addressed the process, provided details of the self-imposed restrictions, discussed the original appeal, and stated that there was a previous covenant that addressed height. She discussed view obstruction, challenges with the covenant, location of the home, types of homes in the community, and site lines. She also provided photo simulations of the proposed house.



Robert Sinclair, Sinclair Associate Architects, provided his company's experience, presented photo simulations of the proposed house, acknowledged Council's concerns regarding the size of the merged lots, addressed the proposed frontage length and mass of the proposed house, discussed the average grade, provided the building footprint of merged and separate lots, and showed the setbacks and simulated view angles.

City Attorney Harp stated that it is important to note that Council is not approving a specific project, but rather the lot merger. He stated that the applicant drafted the covenant as a volunteer decision so that any proposed changes would need to be suggested by him.

**Mayor Gardner opened the public hearing.**

Clifford Jones reported that he has collected over 300 signatures from residents who are against the lot merger, referenced the merger law, stated that the proposed lot merger has been detrimental to the health of those who have deed restrictions, indicated that various appraisers have determined property value losses because of loss of the views, reported that the proposed project is an anomaly relative to the surrounding area, addressed the self-imposed restrictions as well as Planning Commission recommendations, noted that the current proposal does not comply with those recommendations, expressed disappointment that the applicant has not adhered to the standards, presented photos of views taken from several points to illustrate the impacts of the proposed project to surrounding properties, and asked that Council reject the proposed lot merger.

In response to Council Member Daigle's question, Senior Planner Ramirez noted that the proposed lot would be 13,693 square feet and other nearby lots range from 4,000 to 7,000 square feet with some lots being up to 14,000 square feet.

John Cummings reported that lots are being merged all over the City, expressed support for the applicant, listed their attempts to appease the neighbors including changing the proposed two-story to one-story, and presented photographic examples of properties that have recently gone through lot mergers.

Jeff Dufine addressed the existing covenant, stated that the Campbell's and Silva's will proceed to close the Guida's permission to use the road if the merger is approved, discussed the possibility of a unsafe curb cut on Ocean Boulevard, indicated that the Guida's have not worked with the neighborhood, and believed that the applicants are ignoring the recommendations of the Planning Commission.

Carlin Rushing noted that the road is a lane and not an alley and added that mail is delivered on the street.

Stephen Miles, Miles Law Group, spoke on behalf of several property owners, stated that he is confused by the characterization of the item as a lot merger, reported that he previously submitted commentary, stated that the project is also a proposal for demolition and construction, referenced environmental analysis consisting of a categorical exemption for a lot merger (Class 5), noted Class 5 does not apply to lot mergers and relates to changes in density, quoted Planning Commission Chair Toerge regarding the concept of a lot merger, addressed a CEQA guideline regarding "the exception to the exemption", referenced the addition of Class 1 and Class 3 to the categorical exemptions describing each, indicated that there is a need to verify heights, and urged Council to consider the project as a whole not just as a lot merger.

City Attorney Harp stated that all of the planned activities would be categorically exempt, so

the City is not "piece-mealing" them. Regarding the Class 5 exemption, he noted that it is appropriate because density is in fact, decreasing and reported that there are no additional lots being created stating that the land use will still be residential. He noted that in general the impact on the community, at large, must be considered and noted that the proposed use is consistent with other residences adding that there is no record of the property being a historical property.

Marsden Blanch, M.D., addressed the existing restrictive covenant and asked Council to deny the merger, noting that it is the duty of Council to protect public interest rather than individual interests. He asked Council to protect the views of the citizens of Corona del Mar.

Jim Mosher addressed the new resolution and covenant, recommendations by the Planning Commission relative to the need for the City and neighboring residents to sign off any changes made to the covenant, referenced page 3 of the new resolution regarding the CEQA determination (Class 1 and Class 3) noting that they have nothing to do with the merger, addressed dwelling units per acre, and indicated that the new density would not be in the approved range.

Richard Artist believed that no one has tried to supersede the height restrictions until now, stated that the proposed house would be superseding the intent of the restrictions, and affirmed that he lives at 2818 Ocean.

Lucinda Campbell believed that the item violates the Brown Act and contains nothing but denial or approval of a lot merger. She stated that the agenda does not reference demolition or construction as referenced in the last resolution.

Dan Purcell noted that the documents were presented at the last minute, added that he did not get to comment at the last hearing on the item in favor of a longer extension before having the hearing denied even though public comments were not closed at the time, stated that the representative from Government Solutions was adamant about having the hearing tonight which did not allow more time, and referenced the China Cove lot noting that the merger was approved before the property was purchased.

Mark Todd reported that he represented Mr. Guida in the purchase of the properties and disclosed the deed restrictions, believed that the deed restriction is a civil issue stating that the issue should be handled privately, stated that the covenant makes no exclusion of a lot merger and the self-imposed restrictions provide greater side views than the existing structures, indicated that the residents who signed the petition were not in favor of a two-story house and that the proposal is now for a one-story house, noted that three lots of greater size are within close proximity to Mr. Guida's property, and stated that the appraiser quotes referenced earlier are speculative.

In response to Bob Clarke's question, Senior Planner Ramirez stated that the height would be twenty-four (24) feet for a flat roof and twenty-nine (29) feet for a pitched roof. Mr. Clarke believed that there are two issues, a private covenant and the City's allowable building standards. He addressed the importance of the location, stated that whatever is built there, needs to be something special, and believed that the proposed project would reduce density.

John Silva expressed opposition to the proposed merger.

Alberta Silva spoke in opposition to the merger, reported that the proposed project affects their welfare and will reduce the value of their house, believed that the house would be out of place, and asked Council to deny the merger.



Peter Campbell reported that his mother was unable to attend, asked how the City can interfere with a contractual relationship that has been in place for over fifty (50) years, stated that the Planning Commission set guidelines that were not followed, and believed that approving the project would set a bad precedent.

**Hearing no further testimony, Mayor Gardner closed the public hearing and invited the applicant to briefly respond.**

Coralee Newman reiterated that she believed that her client has listened to the neighbors, indicated that the only issue that is important to surrounding neighbors is the view, and asked that if various recommendations are weaved together, they would like the opportunity to respond.

Mr. Guida, applicant, addressed the Floor-to-Area Ratio (FAR), stated that he would agree to a .75 FAR which would satisfy the amount of buildable square footage on the merged lot versus the two individual lots, responded to inquiries from Council Member Henn noting that the design of the current house would fit within the .75 FAR, believed that the City's concerns relate to the size of the house being too large, and added that he would be open for discussion concerning the chimney if needed.

In response to Mayor Pro Tem Curry's question, Community Development Director Brandt explained that the practical impact is related to where the grade will be measured, discussed how grade will be determined on the property, explained how the Zoning Code determines a grade point to measure the overall building height, and reported that a grading of 70.2 foot is not required, but is where the height will be measured from.

Senior Planner Ramirez affirmed that 67.2 foot reflects the grade from the top curb of the sidewalk. In response to Council Member Henn's question, he indicated that it is feasible to build a house with a fifteen (15) foot-height of the roofline from the 67.2 foot established grade.

Mayor Pro Tem Curry inquired regarding Mr. Mosher's concerns relative to decreasing the density not meeting the definition requirements. City Attorney Harp noted that the Class 5 exemption is designed for looking at an increase of density, referenced Mr. Mosher's comment regarding the Coastal Land Use Plan and the range of allowable densities, and noted that the Land Use Element does not contain a minimum developable area so that no conflict exists.

In response to Council Member Daigle's questions, City Attorney Harp stated that Finding A within the Resolution refers to concerns as to whether it is detrimental to the peace and comfort of the community at large, not one particular property owner. Community Services Director Brandt stated that the General Plan and Land Use Plan consider maximum densities allowed; however, the Zoning Code is the implementing document to ensure that development proceeds are in accordance with the General Plan. She added that the Zoning Code establishes a minimum lot size and ensures consistency between the Zoning Code, General Plan, and the Coastal Land Use Plan. She also added that the Zoning Code does not include a maximum lot size but rather a minimum lot size.

Council Member Daigle expressed concern that there is a sub-division pattern in the area and what is being considered is not consistent but alters the sub-division pattern in the neighborhood.

Council Member Selich addressed the density issue noting that it is applicable on general terms to a much larger area rather than a lot-by-lot area, stated that the operative criteria for review is the Zoning Code, and inquired regarding the comment that the Brown Act is being violated because of the addition of the categorical exemptions for construction and demolition in the resolution.

Council Member Hill reviewed the process so far, believed that the Planning Commission must have determined the item is more about size and view than a lot merger, referenced the Planning Commission's recommendations and the applicant's disagreement, stated that there is a solution that protects the view, agreed that the house could be built from the 67.2 foot grade, stated that if this is truly about a lot merger, he would agree with the initial decision of the Planning Commission and could not support the item, and added that if the house could achieve the other aspects, he could support it.

Council Member Henn agreed with Council Member Hill that if the house were built in accordance with the last set of Planning Commission recommendations, he would support the item.

In response to Mayor Gardner's question, Community Development Director Brandt affirmed that access would need to be granted and that the City's Public Works Department has reviewed the issue. She added that City Engineer Brine has determined that access can be granted safely.

Mayor Gardner stated that submitting untimely material is unprofessional and that more time is needed to review.

City Attorney Harp clarified that there are no issues regarding the Brown Act.

Robert Sinclair reported that there is a four (4) foot differential between the front of the house and the back of the house, addressed the neighbor's easement and a five (5) foot differential on the first floor, addressed the lifted finished floor, and wondered regarding the feasibility of a lift between the garage and the first floor.

In response to Council Member Hill's question, Mr. Sinclair stated that an approval from the neighbors would be needed to grade down the back.

In response to Mayor Pro Tem Curry's question, Mr. Jones stated that the neighbors would like removal of the stone work and noted that if the Guida's can accommodate the height, the neighbors would accommodate the easement.

In response to Mayor Gardner's question, City Attorney Harp noted that the issue is with the sizing and massing of the building and noted that the applicant is proposing a voluntary covenant stating that adding additional terms would not be appropriate. Council Member Rosansky asked the applicant about his willingness to lower the height in return for continued easement rights.

Ms. Newman affirmed that it could be agreed upon if Council placed stipulations around the discussions, reported that they were told that the neighbors would not be happy with a three (3) foot reduction, and stated that the applicant would be open to discussions and has always wanted to resolve issues with the neighbors.

City Attorney Harp noted that since the project is up for appeal, it would not be appropriate

for Council to interact directly to settle the item and reported that staff will assist them.

Discussion followed regarding the applicant having presented documents at the last minute.

Ms. Newman reported that everything that has been presented is in the staff report and is part of the public review process. She expressed concerns with relative parties not being available for discussion.

Mr. Miles reported that he has been retained as counsel, can orchestrate the availability of his clients, and would like to have all parties present.

**Motion by Council Member Rosansky, seconded by Council Member Henn** to continue the item to the June 26, 2012 City Council meeting.

The motion carried by the following roll call vote:

Ayes: Council Member Hill, Council Member Rosansky, Mayor Pro Tem Curry, Mayor Gardner, Council Member Selich, Council Member Henn, Council Member Daigle

Council Member Henn expressed dissatisfaction that the issue is ongoing, noted that a decision will be made on June 26, 2012, stated that he was on the edge of voting for Mr. Guida's proposal noting that Mr. Guida has changed his proposal significantly, and urged the neighbors to reach a compromise.

Council Member Daigle expressed appreciation for Council Member Rosansky's effort to continue the item and noted she cannot make the findings for a lot merger.

Mayor Pro Tem Curry agreed with Council Member Henn's comments regarding the three foot easement issue and access to the garage noting that he too was also prepared to vote in support of the item.

City Attorney Harp requested confirmation that the applicant is waiving any applicable time limits.

Ms. Newman affirmed that the time limits are waived.

## **XVII. CURRENT BUSINESS**

### **12. CREATION OF A CHARTER UPDATE COMMITTEE. [33/100-2012]**

Assistant City Manager Smith provided a report that addresses the benefits of forming the Committee and updating the Charter. She added that the Committee would have about eight weeks to perform their work.

Discussion followed regarding the narrow timeframe, the process, advertising for solicitation of members, and the application review process.

Council Member Daigle requested clarification for an amendment. Mayor Gardner clarified that most of the amendments are for clean up.

City Attorney Harp reported that the Committee will review the items which will be presented to Council for direction and approval, noted that it is intended that terms for Boards, Commissions and Committees (BCC) be the same and that the process for

appointing them be streamlined, expressed the importance for consistency between the BCC's, and added that there will be no modifications to the City Attorney Office's powers.

In response to Council Member Daigle's concerns, City Attorney Harp explained that there are a lot of clean up items and inconsistencies on how the Charter reads and how business is being conducted.

Assistant City Manager Smith reported that the City Manager went through the Charter and noted areas that may have conflict or difficulty in practice. She reported that it is not a complete list for examination today, but will come back after the Committee has looked at them.

Discussion followed regarding the limited purview and whether if Council would like for staff to move forward.

Council Member Henn agreed that staff should come back with information to allow Council to provide guidance to the Committee, stated that the Planning Commission minutes illustrate that there was a lot of discussion regarding the Capital Improvements Plan, and expressed concern that it might not be consistent with the General Plan, thereby duplicating efforts.

In response to Council Member Daigle's question, City Attorney Harp reported that staff will return to Council at the next meeting with a more comprehensive plan regarding the Charter Update Committee.

Council Member Rosansky questioned Section 5 of the Resolution.

Council Member Henn suggested that staff provide a list for the Committee to consider and if the Committee wishes to consider something beyond the list, they can present it to Council for approval.

Jim Mosher suggested replacing Exhibit 2, expressed concern with Council amending the Charter, addressed the hasty appointment of a Planning Commissioner noting that it is against State law, referenced previous consideration of the Special Events Advisory Committee by resolution instead of by ordinance, expressed concerns that Council is acting contrary to the Charter, and noted that there is not sufficient time to consider the item as it should be.

City Attorney Harp addressed the ten-day noticing requirement noting that it is not applicable to the formation of a new Committee, believed that it would be better to call the group a Committee instead of Commission, and reported that Exhibit 2 will be replaced prior to the next meeting.

**Motion by Mayor Pro Tem Curry, seconded by Council Member Rosansky** to a) adopt Resolution No. 2012-32 creating a Charter Update Committee that will be charged with reviewing the Charter for possible amendments and making a recommendation to the City Council; b) bring back an updated list to Council of Sections to be considered by the Committee at the May 22, 2012 City Council meeting; c) waive Subsection C of City Council Policy A-2 that requires the Ad Hoc Appointments Committee to recommend potential Charter Update Committee members to the full City Council two weeks prior to appointment; d) confirm Mayor Nancy Gardner's appointment of Mayor Nancy Gardner, Council Member Mike Henn, and Council Member Steven Rosansky to serve on the Ad Hoc Appointments Committee to review applications and make recommendations to the full



Council for membership on the Charter Update Committee; and e) direct the City Clerk to post and publish a Request for Applications for the Charter Update Committee requesting that applications be submitted by 10:00 a.m. on Monday, May 21, 2012 for appointment on May 22, 2012.


The motion carried by the following roll call vote:

Ayes: Council Member Hill, Council Member Rosansky, Mayor Pro Tem Curry, Mayor Gardner, Council Member Selich, Council Member Henn, Council Member Daigle


**XVIII. MOTION FOR RECONSIDERATION - None**

**XIV. ADJOURNMENT - Adjourned at 9:56 p.m. in memory of Alan Beimfohr**

The agenda for the Regular Meeting was posted on May 3, 2012, at 3:50 p.m. on the City Hall Bulletin Board located outside of the City of Newport Beach Administration Building.

  
\_\_\_\_\_  
~~Recording Secretary~~ Mayor

  
\_\_\_\_\_  
Mayor Recording Secretary

  
\_\_\_\_\_  
City Clerk



Approval

City Council Resolution 2012-30



## **RESOLUTION NO. 2012-30**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH APPROVING A SUBSTANTIAL AMENDMENT OF THE COMMUNITY DEVELOPMENT BLOCK GRANT 2010-2011 AND 2011-2012 ANNUAL ACTION PLANS**

**WHEREAS**, the City of Newport Beach participates in the Department of Housing and Urban Development's Community Development Block Grant (CDBG); and

**WHEREAS**, on August 26, 2009, the City of Newport Beach conducted a Community Meeting with Newport Beach residents and community based organizations to evaluate the current level of services offered and to identify any new community needs; and

**WHEREAS**, the Department of Housing and Urban Development (HUD) requires the City to prepare a 5-year "Consolidated Plan" document for the CDBG program and the 2010-2014 Consolidated Plan was adopted by the City Council on April 27, 2010; and

**WHEREAS**, On April 27, 2010, the City Council approved the 2010-2011 Annual Action Plan that included a grant program to assist low-income homeowners to defray the costs associated with private connection to newly undergrounded utilities. To date, no one has participated and the funding for this activity (\$65,922) has remained unspent; and

**WHEREAS**, On April 26, 2011, the City Council approved the 2011-2012 Annual Action Plan that included funding for disability related improvements to curbs, gutters and sidewalks. The funding level for this activity (\$8,802) was not sufficient to implement the activity; and

**WHEREAS**, on March 29, 2012, the City published a public notice in the Daily Pilot newspaper indicating that the Substantial Amendment of the 2010-2011 and 2011-2012 Annual Action Plans would be available to the public for review and comment from March 29, 2012 to May 8, 2012; and

**WHEREAS**, the City Council has considered the community needs, priorities, and strategies set forth in the Consolidated Plan and the Housing Element of the General Plan and concludes the cancellation of the 2010-2011 Utility Assessment District Grant Program and the 2011-2012 Sidewalk, Curb and Gutter Improvements is warranted and will allow reallocation of the funds to other eligible activities within the 2012-2013 Annual Action Plan consistent with the Consolidated Plan and Housing Element; and

**WHEREAS**, the City Council finds this action is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.


**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH DOES HEREBY RESOLVE AS FOLLOWS:**

**SECTION 1.** The 2010-11 Annual Action Plan is amended by canceling the 2010-2011 Utility Assessment District Grant program. Funds allocated to this activity shall be reallocated consistent with the City's housing and community development needs, priorities and strategies identified in the Consolidated Plan by the 2012-2013 Annual Action Plan.


**SECTION 2.** The 2011-12 Annual Action Plan is amended by canceling the 2011-2012 Sidewalk, Curb and Gutter Improvement program. Funds allocated to this activity shall be reallocated consistent with the City's housing and community development needs, priorities and strategies identified in the Consolidated Plan by the 2012-2013 Annual Action Plan.

**SECTION 3.** That the City Council authorizes the City Manager, or his/her designee, to submit the Substantial Amendment, attached as Exhibit "A" hereto, to the Department of Housing and Urban Development and to take any necessary steps to implement the Substantial Amendment.

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Newport Beach at a regular meeting held on the 8th day of May 2012.

  
\_\_\_\_\_  
Nancy Gardner, Mayor

ATTEST:

  
\_\_\_\_\_  
Leilani I. Brown, City Clerk



STATE OF CALIFORNIA                    }  
COUNTY OF ORANGE                   }  
CITY OF NEWPORT BEACH               }       ss.

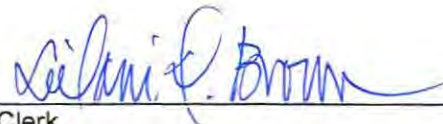
I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing resolution, being Resolution No. 2012-30 was duly and regularly introduced before and adopted by the City Council of said City at a regular meeting of said Council, duly and regularly held on the 8<sup>th</sup> day of May, 2012, and that the same was so passed and adopted by the following vote, to wit:

Ayes:       Hill, Rosansky, Curry, Selich, Henn, Daigle, Mayor Gardner

Noes:       None

Absent:     None

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 9<sup>th</sup> day of May, 2012.



City Clerk  
Newport Beach, California

(Seal)

